



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Thomas W. Noe [REDACTED]
FCI Coleman Low
Federal Correctional Institution
P.O. Box 1031
Coleman, Florida 33521

SEP 1 8 2008

RE: MUR 5871

Dear Mr. Noe:

On April 27, 2007, you were notified that the Federal Election Commission found reason to believe that you knowingly and willfully violated 2 U.S.C. §§ 441f, 441a(a)(1)(A) and 441a(a)(3)(A), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). After considering the circumstances of the matter, the Commission determined on August 19, 2008, to take no further action, and closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Tracey L. Ligon
Attorney

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Thomas W. Noe

MUR: 5871

I. INTRODUCTION

This matter was generated by the Federal Election Commission ("Commission") pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities.

II. DISCUSSION

The Commission previously found that there is reason to believe Thomas W. Noe: (1) knowingly and willfully violated 2 U.S.C. § 441f by making contributions in the name of others; (2) knowingly and willfully violated 2 U.S.C. § 441a(a)(1)(A) by making contributions to Bush-Cheney '04, Inc. that exceeded \$2,000; and (3) knowingly and willfully violated 2 U.S.C. § 441a(a)(3)(A) by making contributions to Bush-Cheney '04, Inc. during the period between January 1, 2003 and December 31, 2004, that exceeded the individual limit of \$37,500.¹

Based on the following information, however, the Commission exercised its prosecutorial discretion and took no further action with respect to Noe. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985) (in determining whether to pursue an enforcement action, an agency "must not only assess whether a violation has occurred, but whether agency resources are best spent on this violation or another . . . [and] whether the particular enforcement action requested best fits the agency's overall policies . . ."). In the criminal proceeding concerning the activity at issue in

¹ The knowing and willful standard requires knowledge that one is violating the law. *See Federal Election Commission v. John A. Dramesi for Congress Committee*, 640 F. Supp. 985, 987 (D. N.J. 1986). An inference of a knowing and willful act may be drawn "from the defendant's elaborate scheme for disguising" his or her actions. *United States v. Hopkins*, 916 F.2d 207, 214-15 (5th Cir. 1990). *Id.* at 214-15.

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this matter, Noe was sentenced to 27 months in prison and fined \$136,200 (300% of the amount in violation of 2 U.S.C. § 441f). Noe is currently serving time in prison related to the reimbursement activity and faces significant additional time in prison related to State charges filed in Ohio.² In the State criminal matter, Noe was sentenced to 18 years in prison, fined \$213,000, and ordered to pay restitution of over \$13 million and the cost of the prosecution, estimated at nearly \$3 million. See <http://www.toledoblade.com/apps/pbcs.dll/article?AID=/20061120/BREAKINGNEWS/6> (visited October 30, 2007). Noe is also a defendant in a civil suit related to his State activity that is scheduled for trial in February 2008. See <http://fcecfcjs.co.franklin.oh.us/CaseInformationOnline/CaseSearch?> (visited October 30, 2007). In sum, Noe has already been punished in the criminal context for the activity in this matter, has been ordered to pay a substantial amount in fines, and will be incarcerated for at least ten more years in connection with his conviction on State charges.³ Continuing to pursue Noe under these circumstances would not be a prudent use of Commission resources.

² Noe's State criminal conviction relates to his handling of a \$50 million investment in rare coins for the Ohio Bureau of Workers' Compensation in what is popularly known as the "coingate" scandal. He was found guilty of 29 charges, including corrupt activity, theft, money laundering, forging records and tampering with documents. See <http://www.toledoblade.com/apps/pbcs.dll/article?AID=/20061113/BREAKINGNEWS/311130> (visited October 30, 2007).

³ Noe's conviction on the corrupt activity charge reportedly carries a minimum mandatory 10-year prison sentence for which there is no possibility of parole. See <http://www.toledoblade.com/apps/pbcs.dll/article?AID=/20061113/BREAKINGNEWS/311130> (visited October 30, 2007).